

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 16149 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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NAGJIBHAI SHAMJIBHAI BHANDARI - Petitioner(s)
Versus
THE CHIEF REVENUE CONTROLLING AUTHORITY & 1 -
Respondent(s)

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Appearance :

MR PN BAVISHI for Petitioner(s) : 1,
MS.NISHA PARIKH AGP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE D.H.WAGHELA

Date : 01/08/2007

ORAL JUDGMENT

1. RULE. Learned A.G.P. Ms.Nisha Parikh
waives service.

2. The petitioner has invoked Article 226 of
the Constitution with the prayer to set aside the

order of Deputy Superintendent of Stamps by which the petitioner's application dated 25.01.2007 for staying the execution proceedings was ordered to be filed on the ground of delay. The date of that order is obscure.

3. During the course of hearing, learned counsel for the petitioner Mr.P.N. Bavishi pointed out from record that the petitioner had along with nine other persons purchased a piece of land comprising 29 plots for which the transfer deed was executed on 05.02.1998. That deed was referred to the Collector for determining the true market value under the provisions of Section 32-A of the Bombay Stamp Act, 1958 (for short, "the Act") and an order dated 01.01.2005 had come to be made by the Deputy Collector, Stamp Duty Valuation Organisation whereby, market value of the land in question was determined and after deducting the stamp duty already paid, deficit stamp duty to the tune of Rs.4,56,250/- along with penalty of Rs.250/- was demanded from the petitioner. It was submitted that, that order dated 01.01.2005 was not served upon the petitioner and he had straightway received notice dated 19.05.2007 for recovery of the total amount due, including interest and surcharge by attachment of movable or immovable properties of the petitioner. The petitioner has, therefore, approached this Court

with the grievance that the duty was made payable by and sought to be recovered only from the petitioner without complying with the provisions of law relevant for the purpose of determining the market value. It was submitted that the petitioner has proposed to approach the Chief Controlling Revenue Authority under the provisions of Section 32-B of the Act but, by virtue of the impugned order, he was denied that opportunity only on the ground that the period of limitation was over and there was no provision for condonation of delay.

4. Learned A.G.P. Ms.Nisha Parikh submitted, on instructions and after referring to the relevant record, that the Deputy Collector concerned had, before making the order dated 01.01.2005, issued several notices to the petitioner and he had not cared to remain present or make any representation before the Collector due to which the *ex-parte* order had come to be made. It was, however, stated that the notices were not issued to each of the buyers of the property as mentioned in the transfer deed and even the notices issued to the petitioner and order dated 01.01.2005 were not served upon him by register post as required by Rule 7 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984. In view of the limited prayer made in the petition and readiness of the

petitioner, expressed by learned counsel Mr. Bavishi, to approach the Deputy Collector with an application for making a reference under the provisions of Section 32-B after depositing and paying the requisite amount, learned A.G.P. stated that in view of serious procedural lapses on the part of the respondent, the application proposed to be made by the petitioner shall be accepted by the Deputy Collector concerned and the amounts by way of deposit and fees shall be accepted for the purpose of drawing up a statement of the case and referring it to the Chief Controlling Revenue Authority, if such application, deposit and payment are made within a period of one month. It was also stated that, upon such application, deposit and payment being made for statement of the case by the Collector under the provisions of Section 32-B and upon the case being referred, it shall be considered by the Chief Controlling Revenue Authority in accordance with law after giving to the petitioner an opportunity of being heard and appropriate orders shall be made as expeditiously as practicable. It was jointly submitted and agreed that, if, in the peculiar facts and circumstances of the case the Authority deems it necessary and proper so to do, notices shall be issued to the co-owners of the land, who are shown to be purchasers of the land in question in the sale deed executed on 05.02.1998 and they

shall also be given an opportunity of being heard.

5. Therefore, recording the above concessions and consensus, the petition is partly allowed with the direction that the petitioner shall make necessary application under the provisions of Section 32-B and make the necessary deposit and pay the fee, on or before **31.08.2007** and then Collector concerned shall draw up a statement of the case and refer it to the Authority which shall expeditiously consider the same in accordance with law after affording to the petitioner and his co-owners of the land in question, if necessary, an opportunity of being heard; and subject to complying with these directions, the notice dated 17.05.2007 for recovery of deficit stamp duty along with penalty and interest shall stand quashed. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

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